Criminal Appeal No. 241 SB of 1994
Khazan Vs. State of Haryana.

And

Criminal Appeal No. 374 SB of 1994
State of Haryana Vs. Khazan

And

Criminal Revision No. 509 of 1994
Gian Singh Vs. Khazan

Present: Mr.J.S.Bedi, Advocate for appellant Khazan
Mr. S.K.Hooda, Sr.Deputy Advocate General, Haryana for State.
Mr. Vivek Goel, Advocate for Gian Singh complainant.

***

JUDGMENT

M.M.Aggarwal, J.

This is an appeal against judgment dated 22.4.1994 of Additional Sessions Judge, Rohtak, whereby Khazan accused- appellant was convicted for offence under Sections 366 IPC and sentenced to undergo RI for 2 years and to pay fine of Rs.500/- and in default of payment of fine to further undergo RI for 3 months.

Prosecution case against the accused-appellant is Sangeeta prosecutrix had gone to bazar, near old bus stand Jhajjar at about 3 PM on 18.3.1992 to bring tea-leaves, for which her mother had sent her to the market. There accused had met and told her that he could get her two papers cleared in which she had not done well. Then accused took her to Rohtak in a Matador.

Then she was taken to Delhi. The parents of prosecutrix Sangeeta had been searching for her till 22.3.1992. Ultimately, Gian Singh, father of the prosecutrix, got recorded his statement (Ex.PH) to the police, on the basis of which case was registered. As per prosecutrix, accused had taken her to Delhi Railway Station and then he started talking in terms of love. The accused untied the string of her Salwar. He removed her Salwar as well as his underwear and thereafter laid upon her and had made an attempt for sexual intercourse but could not succeed as some persons were seen coming towards the spot. Then Sangeeta was brought to Jhajjar by bus on 25.3.1992 by accused, where she was taken to a kotha. Accused then could not arrange money and then left and Sangeeta was recovered. Accused was arrested and then sent for trial for offence under Sections 366/376 IPC. After trial, case for offence under Section 376 was found not proved whereas accused appellant was convicted for offence under Section 366 IPC and sentenced as aforesaid.

In this case Crl. Revision No.509 of 1994 was filed by Gian Singh, father of Sangeeta for enhancement of sentence whereas Crl. Appeal No.374-SB of 1994 was filed by the State of Haryana for enhancement of sentence.

In this case, accused had pleaded that he had love affairs with Sangeeta and Sangeeta had left him of her own accord. It was found that she was definitely less than 18 years of age and more than 16 years. That there had been no injury whatsoever on her private-parts nor there was any evidence of rape and the trial Court had, therefore, rightly acquitted him for offence under Section 376 IPC. Since Sangeeta was less than 18 years of age, accused was convicted for offence under Section 366 IPC.

Counsel for the appellant could not point out any infirmity or illegally as far as conviction for offence under Section 366 IPC was concerned.

However, it was pointed out that petitioner was young boy and occurrence took place more than 15 years back and lenient view be taken. On behalf of the State and complainant prayer was for enhancement of sentence.

I find that appellant has already undergone some imprisonment during investigation of the case. I do not find it a fit case where he should be sent to jail at this stage after 15 years of the occurrence. He was young boy at the time of occurrence. I find it a fit case where benefit of Probation of Offenders Act should be given.

Under these circumstances, while maintaining the conviction of the appellant for offence under Section 366 IPC, it is directed that appellant shall be released on probation for a period of 2 years under Section 4(1) of the Probation of Offenders Act on his furnishing personal bonds in the sum of Rs.5000/- with one surety in the like amount to the satisfaction of Chief Judicial Magistrate Rohtak. During the period of probation, he would keep peace and be of good behavior. He shall also be liable to pay Rs.10,000/- as compensation to Gian Singh, father of Sangeta for harassment and tension. Rs.10,000/- shall be deposited and bonds shall be furnished within three months from today. With above modification, the appeal is dismissed.

In view of the above, Crl. Appeal No. 374 SB of 1994 filed by State and Crl. Revision No. 509 of 1994 filed by Gian Sngh father of the prosecutrix stand disposed of.

(M.M.Aggarwal)
Judge

November 16, 2006
raghav

(M.M.Aggarwal)
Judge

November 17, 2006
raghav